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state, county, district, or municipal officer from accepting a free pass, under penalty of forfeiture of his office, is "one which is not gained by importunity or purchase; gratuitous."

[Ed. Note.—For other cases, see Officers, Dec. Dig. § 66.* See also, 11 Va.-W. Va. Enc. Dig. 493, et seq.]

For other definitions, see Words and Phrases, vol. 3, p. 2967.]

3. Officers (§ 66*)—Removal—Grounds—"Frank."—The word "frank," as used in section 161 of the Constitution of 1902 (Code 1904, p. cclix), prohibiting any state, county, district, or municipal officer from accepting a frank, free pass, or free transportation, is construed in section 153 (p. ccxliv) to mean a writing or token issued by a transmission company entitling the holder to some service free of charge.

[Ed. Note.—For other cases, see Officers, Dec. Dig. § 66.* See also, 11 Va.-W. Va. Enc. Dig. 493, et seq.]

Error to Circuit Court of City of Clifton Forge.

Information in the nature of quo warranto by the Commonwealth, by the Commonwealth Attorney, against J. A. Gleason and others. From a judgment for defendants, relator brings error. Affirmed.

The Attorney General and *John W. Bear*, for the Commonwealth.

John A. Boveles, *O. B. Harvey*, *J. M. Perry*, and *R. L. Parrish*, for defendants in error.

CATES v. COMMONWEALTH.

Nov. 30, 1910.

[69 S. E. 520.]

1. Indictment and Information (§ 191*)—Conviction of Lesser Offense—When Justified.—To justify a conviction of a minor offense on an indictment for another offense, the minor offense must be an ingredient of the offense charged.

[Ed. Note.—For other cases, see Indictment and Information, Cent. Dig. §§ 604-621; Dec. Dig. § 191.* 7 Va.-W. Va. Enc. Dig. 420.]

2. Criminal Law (§ 44*)—Intent to Commit Felony—"Attempt."—An intention to commit a felony, and the doing of some act towards its commission, without actually committing it, is an "attempt."

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 51;

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Dec. Dig. § 44.*

For other definitions, see Words and Phrases, vol. 1, p. 621, vol. 8, p. 7586. 7 Va.-W. Va. Enc. Dig. p. 136.]

3. Indictment and Information (§ 190*)—Conviction of Lesser Offense—Attempt to Commit Felony Charged.—An attempt to commit a felony charged is included in or a part of the offense charged, and one charged with a felony may be convicted of an attempt.

[Ed. Note.—For other cases, see Indictment and Information, Cent. Dig. §§ 506-603; Dec. Dig. § 190.* 7 Va.-W. Va. Enc. Dig. p. 420.]

4. Criminal Law (§ 193½*)—Former Jeopardy—Acquittal.—A conviction of an attempt under an indictment charging felony is an acquittal of the felony.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 387-389; Dec. Dig. § 193½.* 2 Va.-W. Va. Enc. Dig. p. 189.]

5. Criminal Law (§ 193*)—Former Jeopardy—Acquittal.—Under Code 1887, § 4040 (Code 1904, p. 2127), providing that if a verdict finding accused, indicted for a felony, guilty of a part of the offense, be set aside, he shall not be tried for any higher offense than that of which he was convicted, one obtaining a new trial after a conviction of an attempt to commit a felony, under an indictment charging a felony, may only be tried for the attempt to commit the felony.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 378; Dec. Dig. § 193.* 2 Va.-W. Va. Enc. Dig. p. 190.]

Error to Hustings Court of City of Portsmouth.

T. C. Cates was convicted of crime, and he brings error. Reversed.

Samuel W. Williams, Atty. Gen., for the Commonwealth.

FISHER v. BORDEN et al.

Nov. 30, 1910.

[69 S. E. 636.]

1. Mortgages (§ 186*)—Mortgagee as Bona Fide Purchaser—Notice—Evidence.—Notice to the assignee of a bond, secured by a trust deed, that his assignor knew when his trust deed was executed to a prior unrecorded deed to another, may be inferred from circumstances as well as proved by direct evidence.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. § 454; Dec. Dig. § 186.* See also, 10 Va.-W. Va. Enc. Dig. 42; 11 id. 682.]

2. Mortgages (§ 186*)—Mortgages as Bona Fide Purchaser—Notice—Sufficiency of Evidence.—In an action to have a trust deed declared void, on the ground that defendant grantee took with knowledge of plaintiff's prior unrecorded deed to the same land, evidence

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.